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SUPREME COURT OF THE UNITED STATES

October Term 1966

No. 588

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - Petitioners,

versus

FORT KNOX NATIONAL BANK and JAMES J. SAXON, Comptroller of the Currency of the United States, - - - - - Respondents.

PETITION FOR WRIT OF CERTIORARI.

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SUPREME COURT OF THE UNITED STATES

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No. _____

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - - - *Petitioners,*

v.

FORT KNOX NATIONAL BANK and JAMES J. SAXON, Comptroller of the Currency of the United States, - *Respondents.*

PETITION FOR WRIT OF CERTIORARI.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on May 26, 1966.

CITATIONS TO OPINIONS BELOW.

The opinion of Henry L. Brooks, United States District Judge for the Western District of Kentucky, in the case of The First Hardin National Bank, *et al.* v. Fort Knox National Bank, Civil Action #5046, has not been officially reported. A true copy of this opinion is appended hereto as Appendix A to this petition. The Opinion of the Sixth Circuit Court of Appeals has been officially reported at 361 F. 2d 276 (6th Cir., 1966), and a true copy thereof is appended hereto as Appendix B to this petition.

JURISDICTION.

(1) The judgment of the Court of Appeals for the Sixth Circuit is dated May 26, 1966, and was entered on May 26, 1966.

(2) There has been no rehearing. By Order of Mr. Justice Brennan dated August 5, 1966, the time within which to petition for certiorari was extended to and including September 23, 1966.

(3) Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED.

(1) May the Comptroller of the Currency interpret Kentucky Revised Statute 287.180(2) contrary to the Kentucky courts so as to permit under 12 U.S.C. §36(c) a national bank situated on the Fort Knox Military Reservation to establish a branch off the reservation in Hardin County, Kentucky?

(2) Have petitioners had their day in court when the District Court and the Court of Appeals refused to review the Comptroller of the Currency's finding of law that the establishment of a branch bank in Hardin County by the Fort Knox National Bank is authorized by Kentucky and Federal statutes?

(3) Is the determination of the Comptroller of the Currency and the courts below in conflict with the purposes and intent of the National Bank Act as found in 12 U.S.C. *et seq.*, as interpreted by the courts?

STATUTES PRESENTED.

(1) 12 U.S.C. 36; text is appended hereto as Appendix C.

(2) Kentucky Revised Statute 287.180; text is appended hereto as Appendix D.

STATEMENT OF THE CASE.

The First Hardin National Bank is a national banking corporation, with its principal office at Elizabethtown, Hardin County, Kentucky, and with a branch office at Radcliff, Hardin County, Kentucky. The Farmers Bank of Vine Grove is a state banking institution with one office located at Vine Grove, in Hardin County, Kentucky, very close to Radcliff. The defendant, Fort Knox National Bank, is a national banking corporation, with its principal office upon the Fort Knox Military Reservation on land, which before the reservation was created, was a part of Hardin County, Kentucky, and with a branch upon the Fort Knox Military Reservation upon a part thereof which before the reservation was created, was a part of Meade County, Kentucky.

The Fort Knox National Bank announced it proposed to establish a branch in Radcliff, Hardin County, Kentucky, upon land which was not a part of the Fort Knox Reservation.

The right of a national bank to establish a branch bank is controlled by 12 U. S. Code, Section 36(c). It reads in part:

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks."

This Section incorporates by reference Kentucky Revised Statutes 287.180, which provides, in pertinent part, that a bank cannot establish a branch outside of the County in which its main office is located. It reads in part:

"(2) Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Banking for permission to establish, within the city in which its principal office is located and, subject to the limitation hereinafter imposed, within the county in which its principal office is located or in an adjacent county, in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised."

Fort Knox was established and is now operated and controlled by the United States, pursuant to the authority granted to the Congress of the United States by Article I, paragraph 8 of the Constitution of the United States. The Section provides in substance that the Congress shall exercise exclusive "legislation" in all cases whatsoever, over such district if the district is purchased with the consent of the legislature of the state. Kentucky consented to the acquisition by the United States of the Fort Knox Military Reservation. Kentucky did not retain any right of any kind in or upon the land acquired by the United States.

At all times after the acquisition, the United States has exercised exclusive legislation, jurisdiction or sovereignty over the land so acquired, and the State has not claimed or exercised any legislation, jurisdiction or authority thereon, except certain limited rights receded to it by the act of Congress, commonly referred to as the "Buck Act," 4 U.S.C.A., paragraph 105, *et seq.* This Act only authorizes the collection by states of certain taxes upon military reservations and does not affect this action in any way.

These facts are not in dispute among the parties. The dispute deals with the legal conclusions flowing from the facts.

The plaintiffs-petitioners instituted this action in the United States District Court for the Western District of Kentucky to enjoin the defendant-respondent, Fort Knox National Bank, from opening a branch at Radcliff, Hardin County, Kentucky. Jurisdiction was invoked under 28 U.S.C. §1331 as calling into ques-

tion the rights of the defendant, Fort Knox National Bank under 12 U.S.C. §36(c). Plaintiffs-petitioners contended that since the main office of the Fort Knox National Bank is located on the Fort Knox Military Reservation, the Comptroller of the Currency under 12 U.S.C. §36(c) and KRS 287.180(2) may not permit a branch bank to be located off the Reservation in Hardin County, Kentucky (Complaint, Appendix E).

An answer (Appendix F) was filed by the Fort Knox National Bank and the Comptroller of the Currency intervened (Appendix G) in the action. Both contended that that portion of the Fort Knox Military Reservation on which the principal office of the Fort Knox National Bank was located was within the geographical boundaries of Hardin County, and, therefore, the requirements of KRS 287.180 had been met.

At a pretrial conference the District Court made "Findings of Fact," including the finding that the part of the Reservation upon which the main office of the Fort Knox National Bank was located was a part of Hardin County and, as a result, dismissed the Complaint for failure to state a cause of action. This action was appealed to the Sixth Circuit Court of Appeals which affirmed.

REASONS FOR GRANTING THE WRIT.

Preliminary Statement.

(1) The Comptroller of the Currency, the District Court and the Circuit Court of Appeals have completely misinterpreted the meaning and thrust of this Court's opinion in the case of the *Commissioners of the Sinking Fund of the City of Louisville* v. *Howard,* 344 U. S. 624 (1953), and, as a result, have misconstrued the law of Kentucky as to the establishment of branch banks.

(2) This case involves the scope of judicial review and the nature and function of an administrative body. Petitioners contend that the finding of the Comptroller of the Currency as to state law is a finding of law, not one of fact, and subject to complete judicial review. On this point there appears to be a conflict between the Sixth Circuit Court of Appeals' decision in this case and the Court of Appeals for the District of Columbia. *Commercial State Bank* v. *Gidney,* 174 F. Supp. 770 (D.C. D.C., 1959), *aff'd. per curiam,* 278 F. 2d 871 (D.C. Cir., 1960).

(3) No matter what the finding of the law of the particular state is labeled (either a finding of fact or of law), the particular finding in this case of Kentucky law is clearly erroneous and contrary to law.

(4) The interpretation given to the National Banking Act by the Comptroller of the Currency, the District Court and the Circuit Court of Appeals below is

violative of the intent of the National Banking Act, 12 U.S.C. §21, *et seq.*, in that in this case the basic equality between the state and national banking systems is destroyed.

Argument.

FORT KNOX IS NOT WITHIN HARDIN COUNTY WITHIN THE MEANING OF KENTUCKY REVISED STATUTE 287.180(2) AND COMPTROLLER OF THE CURRENCY HAS NO AUTHORITY UNDER 12 U.S.C. 36(c) TO PERMIT A NATIONAL BANK LOCATED ON FORT KNOX TO ESTABLISH A BRANCH IN HARDIN COUNTY.

The authority of the Conptroller of the Currency in issue here is found n 12 U.S.C., Section 36(c):

> "A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) *at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. . . .*" (Emphasis added.)

The Comptroller, thus, is bound by State law in his determination of whether or not a national bank

may establish a branch. This statutory restriction on the Comptroller's authority reflects the intent of the National Banking Act which is to maintain a balance between the dual banking systems. *State of South Dakota* v. *National Bank of South Dakota,* 219 F. Supp. 842 (D.C. S.D., 1963), *aff'd,* 335 F. 2d 444 (Cir. 8, 1964), *cert. denied,* 379 U. S. 970 (1964). It also reflects the intent of Congress that doubts concerning State law authorization of branches be resolved against permitting the branch. The statute specifically requires an affirmative authorization in the applicable state statute.

The state statute on branch banks in Kentucky is KRS 287.180 which reads in part:

> "(2) Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Banking for permission to establish, within the city in which its principal office is located, *within the county in which its principal office is located* or in an adjacent county, in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised. Before the Commissioner of Banking shall approve or disapprove any application made under this subsection he shall ascertain and determine that the public convenience and advantage will be served and prompted thereby and that there is reasonable probability of the successful operation of such branch." (Emphasis added.)

The issue clearly is then whether or not Fort Knox is within Hardin County within the meaning of KRS 287.180.

Petitioners admit that, geographically speaking, Fort Knox (or that portion of it pertaining to this case) is within the geographic boundaries of Hardin County. This point was settled by the case of *Commissioners of the Sinking Fund of the City of Louisville* v. *Howard*, 344 U. S. 624 (1953). The Sixth Circuit (and presumably the Comptroller) treated this geographical finding as determinative of the issue. Petitioners disagree. Kentucky law is controlling here and for the purpose of some Kentucky statutes Fort Knox is within Hardin County and for others it is not. For example, Fort Knox is not within Hardin County for ad valorem taxation purposes. (See *Hardin County Board of Supervisors* v. *Kentucky Limousines*, Ky., 293 S. W. 2d 239 (1956).) It is not within Hardin County for purposes of criminal trial venue and jurisdiction (see *Commonwealth* v. *King*, 252 Ky. 699, 68 S. W. 2d 45 (1934)). Therefore, it is necessary to proceed to an independent construction of the word "county" as used in KRS 287.180. The *Howard* case is not determinative of this issue; it held that the federal property was within the City of Louisville geographically speaking but that the City had jurisdiction to apply its taxing ordinance only by virtue of a Congressional authorization:

> "Two questions are presented by this appeal: (1) The validity of the annexation by the City of Louisville, Kentucky, or certain federally owned

land on which a *Naval Ordnance Plant is located; and (2) *The validity of the Louisville occupational tax or license fee ordinance as applied to employees of this Ordnance Plant"* (344 U. S. 624, at 624, 625). (Emphasis supplied.)

Justice Minton went on after deciding that the Naval Ordnance plant was within Louisville, geographically speaking, to say:

> "Even though the Ordnance Plant is within the boundaries of the City of Louisville pursuant to the annexation, *exclusive jurisdiction over the area still remains with the United States, except as modified by statute.* U. S. Const., Art. I, § 8, cl. 17; Surplus Trading Co. v. Cook, 281 U. S. 647, 652, 74 L. Ed. 1091, 1095, 50 S. Ct. 445. Within this jurisdiction, the right to tax income paid to employees of the Government who worked at the Ordnance Plant was granted by 4 USC §§ 105-110, known as the Buck Act" (344 U. S. 624, at 627). (Emphasis supplied.)

Thus, once it is determined that Fort Knox is within Hardin County geographically it is still necessary to examine into jurisdiction. What saved the City of Louisville ordinance in *Howard* was the "Buck" Act, but there is no such saving grace here. Lacking that permission, the Kentucky Court of Appeals has consistently refused to include federal property within the word "county" in various Kentucky statutes.

A case directly on point is *Commonwealth* v. *King, supra.* In this case King was indicted for making

false entries on the books of a bank located on Fort Knox. The indictment read that the offense was committed in Hardin County "within Fort Knox, the United States Government reservation." The defendant contested the jurisdiction of the Hardin Circuit Court and the Court of Appeals upheld this contention. For purposes of this Kentucky Statute Fort Knox was not within Hardin County so as to give the Court jurisdiction. In *Hardin County Board of Supervisors* v. *Kentucky Limousines, supra,* the Court of Appeals recognized that geographically speaking Fort Knox was within Hardin County, but, after an extensive review of the cases, held Fort Knox was not within the taxing jurisdiction of the County. In the latest Kentucky case, *Kingwood Oil Company* v. *Henderson County Board of Supervisors,* Ky., 367 S. W. 2d 129 (1963), the Court of Appeals held that Henderson County could not levy an ad valorem tax on certain oil and gas leases located within Camp Breckinridge. They said:

> "It must be remembered that the jurisdiction of the federal government over ceded land is *territorial* jurisdiction and embraces all activities, rights and transactions within the external boundaries of the land" (356 S. W. 2d 129, at 132).

KRS 287.180(2), *supra,* is the controlling statute here.

There are no Kentucky decisions construing the word "county" as used in this statute. There is no doubt that under the *Howard* case Fort Knox is geo-

graphically within Hardin County. The question is, however, does the word "county" as used in KRS 287.180(2) include Fork Knox. As shown by previously noted Kentucky cases the Kentucky Court of Appeals consistently has held that unless an exemption is granted by the Congress, Fort Knox, or any other government reservation property, is not subject to exercise of jurisdiction by a political subdivision of the State.

It has been argued below by respondent that these cases are not pertinent because they deal with jurisdiction. With this we cannot agree. The Kentucky Banking Statutes as found in Chapter 287 of the Kentucky Revised Statutes are regulatory statutes. They set up the Department of Banking (287.011), give authority to a Banking Commissioner (287.012), set up the procedure for organizing a bank (287.050), give the qualifications for directors of banks (287.065), give the amount of capital (287.065), etc. and what powers banks shall have (287.180). Since the Kentucky Banking Statute is regulatory in nature, and thus involves jurisdiction, the word "county" in the statute must be interpreted consistent with prior treatment by the Kentucky Court of Appeals. The Court of Appeals of Kentucky has uniformly held that Fort Knox and other federal territory is not within the regulatory or taxing jurisdiction of Kentucky counties. Thus, in this case the Fort Knox National Bank is not within Hardin County for purposes of KRS 287.180 and, therefore, may not, under KRS 287.180 and 12 U.S.C., Section 36(c), establish a branch in Hardin County.

PETITIONERS HAVE NOT HAD THEIR DAY IN COURT WHEN THE DISTRICT COURT AND COURT OF APPEALS HAVE REFUSED TO FULLY REVIEW THE COMPTROLLER OF THE CURRENCY'S FINDING OF LAW THAT THE ESTABLISHMENT OF A BANK IN HARDIN COUNTY BY THE FORT KNOX NATIONAL BANK IS AUTHORIZED BY LAW.

The Comptroller in the instant case held that the establishment of a branch by the Fort Knox National Bank in Hardin County proper was not in violation of Kentucky law. The Sixth Circuit Court of Appeals in commenting on that determination in this case said:

> "This Court held in *Community National Bank of Pontiac* v. *Saxon,* 310 F. 2d 224 (C. A. 6, 1962), that the Comptroller has 'the initial responsibility of determining whether the several conditions under which a National banking association may establish a branch are met.' The scope of judicial review is limited, and the *factual findings* of the Comptroller will not be overturned unless they are arbitrary, capricious, or otherwise not in accordance with law. In that case the Court held that the finding of the Comptroller that the area in which the defendant bank sought to establish a branch was a village as required by the Michigan statute was essentially a *finding of fact* and his decision was conclusive since it was reasonably supported by substantial evidence.
>
> * * * * * * *
>
> "Therefore, for the purposes of the Banking Act it became a question of fact for the Comptroller to determine, and the finding of the Comptroller that the part of Fort Knox upon which Appellee is located is part of Hardin County

as required by Kentucky statute, is a factual finding reasonably supported by substantial evidence" (361 F. 2d 276, at 278, 279). (Emphasis supplied.)

It is the position of petitioners that (a) the finding as to Kentucky law is not a finding of fact but one of law and subject to complete judicial review, and (b) that even if it is a finding of fact it is contrary to Kentucky Law and reviewable as is any extra-legal act of a federal or state official.

In *Commercial State Bank* v. *Gidney,* 174 F. Supp. 770, (D.C. D.C., 1959), *aff'd per curiam,* 278 F. 2d 871 (D.C. Cir., 1960), District Judge Youngdahl wrote:

> "Defendant argues that the approval or disapproval of branches of national banks is a matter clearly committed to the discretion of the Comptroller. But there is no discretion in the Comptroller to approve the establishment of a branch office at a location prohibited by law. Defendants cite Apfel v. Mellon, 1929, 59 App. D. C. 94, 33 F. 2d 805, and First National Bank of McKeesport v. Home Loan Bank Board, 1955, 96 U. S. App. D. C. 194, 225 F. 2d 33. Apfel was a suit to compel the Federal Reserve Board to approve the articles of incorporation of the appellants so that they might engage in international or foreign banking. The Court held that mandamus would not lie to control the exercise of the Board's discretion. *In the instant case, there is no desire to control the defendant's discretion; whether a particular area is in need of a bank, whether the local conditions warrant one, etc. (see supra, note 13) is clearly within the Comptroller's*

discretion. But, as mentioned above, there is no discretion to unlawfully issue a certificate" (174 F. Supp. 770). (Emphasis added.)

To allow the Sixth Circuit Court of Appeals' opinion to stand in this case is to grant to the Comptroller powers far beyond what was conceived by Congress. It makes his finding of law almost binding on review. It is the very essence of the appellate structure of our federal judiciary that findings of law, wherever originated from, are subject to review almost "de novo." In *Patton* v. *Railroad Retirement Board,* 313 F. 2d 434 (5th Cir., 1963), the Court said that "Although we are bound to the facts as found by the Board 'if supported by evidence,' we are in no manner bound in ascertaining the correctness of the Board's legal conclusions." The Third Circuit Court of Appeals said in *Boyd* v. *Folsom,* 257 F. 2d 778 (3d Cir., 1958):

> "It must immediately be noted that this finding by the Referee was in the nature of an ultimate finding of fact, and is nothing more than a legal inference from other facts. In re Pioch, 3 Cir., 1956, 235 F. 2d 903. While it is true, as the Secretary argues, that the reviewing authority of the District Court is limited in that it may not substitute its own factual findings for those of the Referee, Section 205(g), Social Security Act; Ferenz v. Folsom, 3 Cir., 1956, 237 F. 2d 46, since *ultimate facts* must be reached by a *process of legal reasoning* based upon the legal significance to be afforded primary evidentiary facts this aspect of administrative fact finding has its law-making aspect, and is therefore reviewable" (257 F. 2d 778 at 781). (Emphasis supplied.)

In *Whitney National Bank* v. *Bank of New Orleans & Trust Co.*, 323 F. 2d 290 (D.C. Cir., 1963), *reversed on other grounds*, 379 U. S. 411 (1965), the Circuit Court of Appeals commented on the Comptroller's discretion as follows:

> "The Comptroller asserts he has discretion as to whether to issue a Certificate of Authority to a new national bank which cannot be judicially controlled. The same contention was made in Commercial State Bank of Roseville v. Gidney, 174 F. Supp. 770 (D.C. D.C., 1959), where two state banks within one and one-half miles of a proposed national bank branch sought to enjoin the then Comptroller from authorizing the unlawful competition which threatened them with immediate and irreparable injury. Uncontroverted affidavits showed that the town of Clinton, site of the proposed branch, could not itself support the new facility, which would therefore necessarily draw its business from the surrounding communities already served by the complaining state banks. District Judge Youngdahl brushed aside the Comptroller's discretion argument by saying, at page 778:
>
> " 'Defendant argues that the approval or disapproval of branches of national banks is a matter clearly committed to the *discretion* of the Comptroller. But there is *no discretion* in the Comptroller to approve the establishment of a branch office at a location prohibited by law. * * * In the instant case, there is no desire to control the defendant's discretion * * *. But, as mentioned above, there is *no discretion* to unlawfully issue a certificate. * * *' " (323 F. 2d 290, at 300).

In commenting on the same point, Judge Walsh noted in *Commercial Security Bank* v. *Saxon,* 236 F. Supp. 457 (D.C. D.C., 1964), that the Circuit Court of Appeals for the District of Columbia clearly has held (as noted above) that the determination of state law by the Comptroller was not binding. He said:

> "The Comptroller further contends that his determination, based upon his statutory interpretation of 12 U.S.C. § 36(c), should be upheld by this court unless it is clearly unreasonable. Whatever be the merits of this contention, it is clearly not the law in this Circuit" (236 F. Supp. 457, at 458, 459).

In direct conflict with the above cited cases is the case relied upon by the Sixth Circuit in the instant case. In *Community National Bank of Pontiac* v. *Saxon,* 310 F. 2d 224 (6th Cir., 1962). The Sixth Circuit Court of Appeals said:

> "It is well settled that the decisions of executive officers on questions of fact are conclusive if reasonably supported by substantial evidence" (310 F. 2d 224, at 226).

In the opinion of the Sixth Circuit below the Court commented on the *Pontiac* case saying:

> "In that case the Court held that the finding of the Comptroller that the area in which the defendant bank sought to establish a branch was a village as required by the Michigan statute was essentially a finding of fact and his decision

> was conclusive since it was reasonably supported by substantial evidence" (361 F. 2d 276, at 278, 279).

They then went on to apply this rule to this case saying:

> "Therefore, for the purposes of the Banking Act it became a question of fact for the Comptroller to determine, and the finding of the Comptroller that the part of Fort Knox upon which Appellee is located is part of Hardin County as required by Kentucky statute, is a factual finding reasonably supported by substantial evidence" (361 F. 2d 276, at 279).

The determination by the Comptroller of the Currency that the branch was authorized under Kentucky law is a finding of law, not of fact, and subject to complete judicial review. *Boyd* v. *Folsom, supra.* This would appear to be the view of the Court of Appeals for the District of Columbia. *Whitney National Bank* v. *Bank of New Orleans & Trust Co., supra; Commercial Security Bank* v. *Saxon, supra.* Quite clearly then the Sixth Circuit Court of Appeals is in disagreement with the law of the Circuit Court of Appeals for the District of Columbia.

At this point it is appropriate to note that no matter what the rule may be as to scope of Judicial review of administrative determination, determinations contrary to law are reviewable. *Commercial State Bank of Roseville* v. *Gidney, supra; Community National Bank of Pontiac* v. *Saxon, supra.* Here, the law of Kentucky is quite clearly contrary to the deter-

mination of the Comptroller of the Currency. Failure to review the finding of the Comptroller of the Currency when clearly "contrary to law" deprives the petitioners of due process of law for it allows the petitioner no review of an administrative determination adverse to its interests at which it had no voice or hearing. It allows an illegal act to stand because the Comptroller has decided the point. As Mr. Justice Frankfurter wrote in the case of *Inland Waterways Corporation* v. *Young,* 309 U. S. 517 (1940):

> "The Comptroller of the Currency, to be sure, must himself move within the orbit of the National Banking Act. Illegality cannot attain legitimacy through practice" (309 U. S. 517, at 524).

The determination of the Comptroller of the Currency as to Kentucky law is clearly wrong, and as such, is clearly "contrary to law" and should be overturned. At the very least, petitioners should have their day in court by directing the Courts below to examine the Comptroller's action in the light of applicable Kentucky law and decisions.

THE DETERMINATION OF THE COMPTROLLER OF THE CURRENCY AND THE COURTS BELOW IS IN CONFLICT WITH THE PURPOSES AND INTENT OF THE NATIONAL BANK ACT AS FOUND IN 12 U.S.C., *ET SEQ.*, AS INTERPRETED BY THE COURTS.

It has been repeatedly held that the purpose of 12 U.S.C., Section 36(c), is to promote equality between the State and National banking system by limiting National bank branches to those areas where state

banks may have branches. In *National Bank of Detroit* v. *Wayne Oakland Bank*, 252 F. 2d 537 (6th Cir., 1958), the Court said:

> "(3) The history of federal legislation regarding branch banking and the statutes applying thereto leave a clear and definite impression that Congress intended, with respect to the location of branches, that a national bank should have no greater rights than it would if it were a state bank, and that a national bank was to be permitted to establish and operate a branch in a state only at such a point as it could, by express provisions of a state statute, establish and operate a branch if it were then a state bank" (252 F. 2d 537, at 540).

The result of the decision below is to allow the Fort Knox National Bank to do that which no state bank could do; that is have a branch in a county other than the county in which it is located. If the Fort Knox National Bank is within Hardin County, then its existing branch now located on the post is within Meade County. The District Court ruled this fact irrelevant and refused to consider it. It is very relevant when one considers the intent of 12 U.S.C., Section 36(c). The Fort Knox National Bank has branches in two counties, something expressly forbidden by KRS 287.180 to state banks except under circumstances not pertinent to the issue herein. This result clearly violates the spirit of the Act. Petitioners' position on the other hand is in complete harmony with the Act. If Fort Knox is not within Hardin County for pur-

poses of KRS 287.180, then it can have branches on federal property no matter what county or state it was geographically located in because the limitations of the Kentucky statute would be inapplicable.

There is another reason that Sixth Circuit Court of Appeals Opinion in this case violates the purposes and spirit of the National Banking Act. 12 U.S.C., Section 36(c) was designed to promote equality between the state and National banking systems in the competitive area. *Herbert J. Rushton, Attorney General Ex. Rel. Commissioner of Banking* v. *Michigan National Bank,* 298 Mich. 417, 299 N. W. 129 (1941). *Commercial Security Bank* v. *Saxon, supra.* The Fort Knox National Bank will have far greater economic power and resources if on one hand it may establish branches on federal territory regardless of geographic location and in Hardin County as will. It will have access to far more people, more depositers and deposits, and exert as a result far greater economic power.

CONCLUSION.

The Comptroller of the Currency's determination of Kentucky law as to the location of branch bank is clearly erroneous. This finding of law by the Comptroller of the Currency is fully reviewable by the courts and the refusal to do so by the Court below has deprived petitioners of their rights to review. The Sixth Circuit opinion in the instant case is also in conflict with opinions of the Circuit Court of Appeals for the District of Columbia. The decision below is also viola-

tive of the spirit and intent of the National Banking Act.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

EDGAR A. ZINGMAN,

Counsel for Petitioners.

APPENDIX A

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

Civil Action No. 5046

The First Hardin National Bank and The Farmers Bank of Vine Grove, Kentucky, - Plaintiffs,

v.

Fort Knox National Bank, - - - Defendant,
James J. Saxon, Comptroller of the Currency of the United States, - - Intervener-Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause being heard pursuant to an order for pretrial conference and all parties having been heard by counsel before the Court in chambers at Louisville, Kentucky, on Wednesday, September 1, 1965, at 3:30 P.M., EST, and the Court having considered the arguments of counsel and the briefs filed herein, the pleadings and exhibits and having considered the motions herein made, and the Court, being sufficiently advised, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

(1) The plaintiff, The First Hardin National Bank, a national banking association, has its principal office in Elizabethtown, Hardin County, Kentucky, and a branch

bank in the incorporated city of Radcliff in Hardin County, Kentucky.

(2) The plaintiff, The Farmers Bank of Vine Grove, a State bank, has its principal office in the incorporated City of Vine Grove in Hardin County, Kentucky, and has no branch bank.

(3) The defendant, Fort Knox National Bank, a national banking association, has its principal office on the Fort Knox Military Reservation on that part of the reservation which, at the time of acquisition by the United States Government, was geographically a part of Hardin County, Kentucky.

(4) James J. Saxon is the duly appointed, qualified and acting Comptroller of the United States and is charged by Law (Title 12, U. S. Code 36(c) with the approval of applications of national banking associations to establish branches. Said James J. Saxon, Comptroller of the Currency, by Order dated August 20, 1965, has been permitted to intervene as a defendant in this action.

(5) The Statute Law of Kentucky, KRS 287.180, permits a state bank, under certain conditions, with the approval of the State Commissioner of Banking, to establish a branch in another incorporated city in the same County in which the principal office of the bank is located, provided there is no principal office of a bank, as distinguished from a branch thereof, in such other incorporated city.

(6) There is no existing principal office of a bank, as distinguished from a branch, in Radcliff, Hardin County, Kentucky.

(7) The defendant, Fort Knox National Bank, made application to the Comptroller of the Currency of the United States, pursuant to Title 12, U. S. Code 36(c), to establish a branch in Radcliff, Hardin County, Kentucky.

(8) After an investigation, the Comptroller of the Currency gave preliminary approval to the application of the

defendant, Fort Knox National Bank, to establish a branch in Radcliff, Hardin County, Kentucky, as evidenced by a letter dated April 16, 1965, attached as defendant's Exhibit A to the answer of the defendant, Fort Knox National Bank.

CONCLUSIONS OF LAW.

(1) This Court has no jurisdiction to review the approval by the Comptroller of the Currency of an application by a national bank for a new branch, except to determine whether or not he has correctly applied the state law standards of location and capitalization made applicable by Title 12, U. S. Code 36(c).

(2) There is no genuine issue as to any material fact between the parties.

(3) The cession in 1904 (KRS 3.030) by the Commonwealth of Kentucky of rights and jurisdiction to the United States over the area now known as the Fort Knox Military Reservation did not cause that portion of the Reservation upon which the principal office of the Fort Knox National Bank is located to cease to be a part of Hardin County and the State of Kentucky. The geographic structure of Hardin County and of Kentucky remained the same as it was before the cession of jurisdiction over the area.

(4) A national banking association, with the approval of the Comptroller of the Currency of the United States, may establish and operate branches at any point within the state in which said association is situated, at which such establishment and operation are authorized to state banks by the Statute Law of the state in question. (Title 12, U. S. Code, Section 36(c)(2).

(5) The Statute Law of Kentucky authorizes to state banks the establishment and operation of branches in any city in the same county in which the bank is situated if there is no "existing bank" in that city. The term "existing

bank" means the principal office of the bank as distinguished from a branch thereof. KRS 287-180(2)(b).

(6) A state bank, whose principal office is situated on that part of the Fort Knox Military Reservation which is a part of Hardin County, could, with the approval of the Kentucky Commissioner of Banking, establish a branch in the incorporated city of Radcliff, Hardin County, Kentucky.

(7) The law of the case is with the defendant, Fort Knox National Bank, and the intervener-defendant, James J. Saxon, Comptroller of the Currency of the United States.

(8) The complaint fails to state a claim upon which relief can be granted against the defendants.

Date: 9-14-65.

(s) Henry L. Brooks
Judge.

Have seen:

Robert E. Hatton
L. A. Faurest
Attorney for First Hardin National Bank
L. Lyne Smith, Jr.

A Copy: Attest
Martin R. Glenn, Clerk
By Helen Harbison
Deputy Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 16906

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - *Plaintiffs-Appellants,*

v.

FORT KNOX NATIONAL BANK, - *Defendant-Appellee,*
and
JAMES J. SAXON, Comptroller of the Currency of the United States, - *Intervening Defendant-Appellee.*

Appeal from the United States District Court for the Western District of Kentucky.

Decided May 26, 1966.

Before: WEICK, Chief Judge, O'SULLIVAN and CELEBREZZE, Circuit Judges.

CELEBREZZE, Circuit Judge. The First Hardin National Bank, a National Banking Corporation, and The Farmers Bank of Vine Grove, a State Banking Corporation, hereinafter referred to as Appellants, instituted this action to enjoin the Fort Knox National Bank, hereinafter referred to as Appellee, from opening a branch bank at Radcliff, Har-

din County, Kentucky. James J. Saxon, Comptroller of the Currency of the United States, intervened on behalf of the Appellee.

Appellee is a National Banking Corporation, with its principal office located upon the Fort Knox Military Reservation. Fort Knox was established and is now operated and controlled by the United States. The State of Kentucky consented to the acquisition by the United States of the Fort Knox Military Reservation, and did not retain any right of any kind in or upon the land acquired by the United States for so long as the same shall remain the property of the United States.[1]

Pursuant to 12 U.S.C., Section 36(c),[2] Appellee sought to establish a branch bank at Radcliff, Hardin County, Kentucky. The Comptroller of the Currency investigated Appellee's application and on April 15, 1965, gave preliminary approval. At the time this suit was instituted, Appellee had not asked for a certificate of authority to open the branch, and one has not yet been granted.

A National bank, with the approval of the Comptroller of the Currency of the United States, may establish and

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[1]KRS 3.030 provides: "Jurisdiction over Military Post (Fort Knox) at West Point Ceded. Kentucky cedes to the United States all the rights and jurisdiction which she now possesses over the land and premises in the vicinity of West Point, Kentucky, conveyed or to be conveyed to the United States for the purposes of establishing a permanent camp of instruction and military post so long as the same shall remain the property of the United States."

[2]12 U.S.C.A., Section 36(c) provides as far as applicable here: "A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State Banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication of recognition, and subject to the restrictions as to location imposed by the law of the State on State banks."

operate a branch at any point within the State where the State authorizes the establishment and operation of a State bank.[3] The statute law of Kentucky, KRS 287.180(2) provides:

> "Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Banking for permission to establish, within the city in which its principal office is located and, subject to the limitation hereinafter imposed, within the county in which its principal office is located or in an adjacent county, in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised * * *
>
> "(b) No such corporation shall be permitted to establish a branch in any incorporated city, other than in the city in which its principal office is located or in any adjacent county, in which there is an existing bank. Nor shall any such corporation be permitted to establish a branch in any unincorporated area within a radius of one mile of an existing bank located in such unincorporated area. As used in this subsection, an 'existing bank' shall mean the principal office of a bank as distinguished from a branch thereof."

Here the Appellee, located upon the Fort Knox Military Reservation, is attempting to establish a branch bank, outside the Reservation, at Radcliff, Hardin County, Kentucky. It is conceded there is no principal office of any bank in Radcliff, and that Appellee has its main office on a part of Fort Knox which was a part of Hardin County at the time of its acquisition by the United States.

The sole issue presented is whether that part of Fort Knox, which was part of Hardin County at the time it was

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[3] 12 U.S.C., Section 36(c)(2).

acquired by the United States with the consent of Kentucky, is a part of Hardin County as the word "county" is used in the Banking Act of Kentucky. Appellee and the Comptroller of the Currency urge that it is, and the District Court so found.

This Court held in *Community National Bank of Pontiac* v. *Saxon,* 310 F. 2d 224 (C.A. 6, 1962) that the Comptroller has "the initial responsibility of determining whether the several conditions under which a National banking association may establish a branch are met." The scope of judicial review is limited, and the factual findings of the Comptroller will not be overturned unless they are arbitrary, capricious, or otherwise not in accordance with law. In that case the Court held that the finding of the Comptroller that the area in which the defendant bank sought to establish a branch was a village as required by the Michigan statute was essentially a finding of fact and his decision was conclusive since it was reasonably supported by substantial evidence.

The principle has been well established that a military reservation within a state remains a geographical part of the city, county and state of which it was part at the time of acquisition by the United States. In *Howard* v. *Commissioners of the Sinking Fund of the City of Louisville,* 344 U. S. 624 (1953), the City of Louisville, Kentucky annexed certain federally owned land on which a naval ordnance plant was located. The Appellants in that case argued that the City could not annex this federal area because it had ceased to be a part of Kentucky when the United States assumed exclusive jurisdiction over it. In holding that the geographical structure of Kentucky remained the same, the Supreme Court stated:

> "When the United States, with the consent of Kentucky, acquired the property upon which the Ordnance Plant is located, the property did not cease to

> be a part of Kentucky. The geographical structure of Kentucky remained the same. In rearranging the structural divisions of the Commonwealth, in accordance with the state law, the area became a part of the City of Louisville, just as it remained a part of the County of Jefferson and the Commonwealth of Kentucky."

In the instant case, upon conveyance to the United States, the State of Kentucky relinquished its jurisdiction over the area conveyed. Under the terms of the conveyance, the loss of jurisdiction was not absolute. The interest of Kentucky in the land conveyed became dormant, and will remain dormant so long as the land conveyed remains the property of the United States. When the United States ceases to own the land conveyed, jurisdiction will be reactivated in the State of Kentucky. The geographical structure of the State of Kentucky not only remains the same, but the State retains a dormant jurisdiction over the land.[4]

Appellees contend that "county" involves geography, and argue that geographically the part of Fort Knox which had been a part of Hardin County at the time of conveyance is still a part of Hardin County.

Appellants contend that when the Kentucky legislature used the word "county" in KRS 287.180(2) it used it to designate a political entity, and did not use the word "county" as a geographic term.

A political subdivision must of necessity have geographic boundaries—the political aspect dealing with the

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[4]Under Section 63 of the Kentucky Constitution, the Kentucky General Assembly did not exercise its authority to abolish Hardin County. Section 65 of the Kentucky Constitution provides that there shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition for subdivision. We are unable to determine from the record whether either one of these two provisions was complied with.

right to govern, the geographic boundaries dealing with the physical layout of the land area, and consequently a limitation its political control over the area so long as the property is owned by the United States Government, but did not relinquish its geographical boundaries.

Therefore, for the purposes of the Banking Act it became a question of fact for the Comptroller to determine, and the finding of the Comptroller that the part of Fort Knox upon which Appellee is located is part of Hardin County as required by Kentucky statute, is a factual finding reasonably supported by substantial evidence.

Judgment of the District Court is affirmed.

APPENDIX C

12 U.S.C., SECTION 36

§ 36. Branch banks

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) A national banking association may retain and operate such branch or branches as it may have had in lawful operation on February 25, 1927, and any national banking association which continuously maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding February 25, 1927, may continue to maintain and operate such branch.

(b) (1) A national bank resulting from the conversion of a State bank may retain and operate as a branch any office which was a branch of the State bank immediately prior to conversion if such office—

(A) might be established under subsection (c) of this section as a new branch of the resulting national

bank, and is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank;

(B) was a branch of any bank on February 25, 1927; or

(C) is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the national bank) resulting from the conversion of a national bank would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the national bank immediately prior to conversion.

(2) A national bank (referred to in this paragraph as the "resulting bank"), resulting from the consolidation of a national bank (referred to in this paragraph as the "national bank") under whose charter the consolidation is effected with another bank or banks, may retain and operate as a branch any office which, immediately prior to such consolidation, was in operation as—

(A) a main office or branch office of any bank (other than the national bank) participating in the consolidation if, under subsection (c) of this section, it might be established as a new branch of the resulting bank, and if the Comptroller of the Currency approves of its continued operation after the consolidation;

(B) a branch of any bank participating in the consolidation, and which, on February 25, 1927, was in operation as a branch of any bank; or

(C) a branch of the national bank and which, on February 25, 1927, was not in operation as a branch

of any bank, if the Comptroller of the Currency approves of its continued operation after the consolidation.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the resulting national bank) resulting from the consolidation into a State bank of another bank or banks would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the State bank immediately prior to consolidation.

(3) As used in this subsection, the term "consolidation" includes a merger.

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such asso-

ciation is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided,* That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock. As amended July 15, 1952, 1952, c. 753, § 2(b), 66 Stat. 633; Sept. 28, 1962, Pub. L. 87-721, 76 Stat. 667.

APPENDIX D

KENTUCKY REVISED STATUTES

287.180 [579] **Powers of banks; branch and agency banks.** (1) Banks authorized under the laws of this state may, except as provided in subsection (2) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest thereon, buying and selling exchange, coin and bullion and lending money on personal or real security.

(2) Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Bank-

ing for permission to establish, within the city in which its principal office is located and, subject to the limitation hereinafter imposed, within the county in which its principal office is located or in an adjacent county, in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised. Before the Commissioner of Banking shall approve or disapprove any application made under this subsection he shall ascertain and determine that the public convenience and advantage will be served and prompted thereby and that there is reasonable probability of the successful operation of such branch. No such branch shall be authorized or approved by the commissioner unless all of the following are complied with:

(a) No such corporation having a combined capital and surplus of less than $100,000 shall be permitted to establish any branch. Any corporation applying for permission to establish a branch shall, be required to have a minimum combined capital and surplus for each branch applied for in accordance with the following table:

If the principal office is located in:

1. An unincorporated area or in a city of 7,999 population or less.....$100,000
2. City with population of 8,000 to 19,999.....$200,000
3. City with population of 19,999 and over one branch may be authorized for every $250,000 of capital surplus.

Said population is to be determined by the last census or any future census of the United States.

(b) No such corporation shall be permitted to establish a branch in any incorporated city, other than in the city in which its principal office is located or in any adjacent county, in which there is an existing bank. Nor shall any

such corporation be permitted to establish a branch in any unincorporated area within a radius of one mile of an existing bank located in such unincorporated area. As used in this subsection, an "existing bank" shall mean the principal office of a bank as distinguished from a branch thereof.

(c) The permission to open a branch shall lapse at the end of six months unless it shall have been opened and business actually begun in good faith. For reasons determined by the Commissioner of Banking to be sufficient said permission to open a branch may, with the approval of the commissioner, be extended for one six month's period.

(3) Any corporation which on January 1, 1954, was engaged in operating an agency or branch bank, may continue to retain and operate the same under the general banking laws, and the requirements set forth in this section in respect to capital shall not apply to any such existing agency or branch bank but only as to those agencies or branch banks which may be established in the future pursuant to the terms of this section.

(4) The provisions of this section shall not be construed to prohibit the merger of banks in the same county and the operation by the merged corporation of such banks, nor to prohibit the sale of any bank to, and the purchase thereof by, any other bank in the same county and the operation of such bank by the purchasing bank as a branch, provided the Commissioner of Banking shall determine that the public convenience and necessity will be served by such operation, and provided further that, at the time of such merger or purchase, each of the banks involved shall have been in operation for a period of five years or more.

(5) Any national banking association or any state bank member of the Federal Reserve System whose principal office is located in this state is hereby authorized to do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the con-

ditions and restrictions provided for banks as to exercise of such powers.

(6) When a branch or agency bank has once been established any operation thereof shall not be discontinued, and said branch or agency bank shall not be closed until after ninety days notice in writing to the commissioner. In the discretion of the commissioner said branch or agency bank proposing to discontinue operation may be required to give notice of the date when such operation will cease. (1954, c. 182, § 1; 1962, c. 252)

APPENDIX E

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action File No. 5046

The First Hardin National Bank and
The Farmers Bank of Vine Grove, Kentucky, - Plaintiffs,

v.

Fort Knox National Bank, - - - Defendant.

COMPLAINT.

(1) This action arises under Title 12, Paragraph 35, United States Code as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand ($10,000.00) Dollars.

(2) The plaintiff, The First Hardin National Bank, is a national banking corporation duly created and existing under and by the banking laws of the United States. The principal office and place of business of the said Bank is in Elizabethtown, Hardin County, Kentucky. It owns and operates a branch in Radcliff, an incorporated city located in Hardin County, Kentucky. It has owned and operated the said branch for more than two (2) years.

(3) The Farmers Bank of Vine Grove is a banking corporation duly created and existing under and by the laws of the State of Kentucky. It owns and operates a bank in Vine Grove, an incorporated city of Hardin County, Kentucky, and has owned and operated said bank in said city for more than twenty (20) years.

(4) The defendant, Fort Knox National Bank, is a banking corporation duly created and existing under and by the laws of the United States. Its principal office and place of business is located upon the Fort Knox Military Reservation.

(5) The defendant has announced it will open a branch bank in Radcliff, Hardin County, Kentucky, and unless enjoined and restrained by this Court will open a branch bank in said City.

(6) Title 12, Paragraph 36, United States Code Annotated provides in substance banks organized under the laws of the United States may open branches when and where a state bank would be authorized to open a branch.

(7) Kentucky Revised Statutes 287.180 provides: Powers of banks; branch and agency banks. (1) Banks authorized under the laws of this state may, except as provided in subsection (2) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest

thereon, buying and selling exchange, coin and bullion and lending money on personal or real security.

(2) Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Banking for permission to establish, within the city in which its principal office is located and, subject to the limitation hereinafter imposed, within the county in which its principal office is located or in an adjacent county in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised. Before the Commissioner of Banking shall approve or disapprove any application made under this subsection he shall ascertain and determine that the public convenience and advantage will be served and prompted thereby and that there is reasonable probability of the successful operation of such branch. No such branch shall be authorized or approved by the commissioner unless all of the following are complied with: (a) No such corporation having a combined capital and surplus of less than $100,000 shall be permitted to establish any branch. Any corporation applying for permission to establish a branch shall, be required to have a minimum combined capital and surplus for each branch applied for in accordance with the following table:

If the principal office is located in:

1. An unincorporated area or in a city of 7,999 population or less.....$100,000
2. City with population of 8,000 to 19,999.....200,000
3. City with population of 19,999 and over one branch may be authorized for every $250,000 of capital and surplus.

Said population is to be determined by the last census or any future census of the United States.

(b) No such corporation shall be permitted to establish a branch in any incorporated city, other than in the city in which its principal office is located or in any adjacent county, in which there is an existing bank, nor shall any such corporation be permitted to establish a branch in any unincorporated area within a radius of one mile of an existing bank located in such unincorporated area. As used in this subsection, an "existing bank" shall mean the principal office of a bank as distinguished from a branch thereof.

(8) The defendant claims under and by the provisions of the said Statutes it is authorized and permitted to open and operate a branch bank in Hardin County, Kentucky, and in the City of Radcliff, Hardin County, Kentucky. The plaintiffs claim under and by said Statutes the defendant cannot open or operate a bank in Hardin County, Kentucky, or in the City of Radcliff, Hardin County, Kentucky, and the opening or operating of any bank or branch of the Fort Knox National Bank in Hardin County, Kentucky, would be unlawful.

(9) The defendant does not have an office, place of business or process agent in the State of Kentucky and does not pay taxes in the State of Kentucky.

(10) The operation by the defendant of a branch in the City of Radcliff would cause plaintiffs to lose customers and would impair the ability of each plaintiff to operate a bank and would cause great and irreparable injury to each plaintiff.

Wherefore, the plaintiffs demand the Court declare the rights of the parties; that the Court declare the defendant does not have a right to open or operate a branch bank in Hardin County, Kentucky, or in the City of Radcliff, Hardin County, Kentucky, and that an order enjoining and

prohibiting the defendant from opening or operating any such bank be entered herein.

L. A. Faurest, Attorney for
First Hardin National Bank
H. L. James, Attorney for
Farmers Bank of Vine Grove, Kentucky

APPENDIX F

ANSWER OF THE FORT KNOX NATIONAL BANK.

For its Answer, Defendant, Fort Knox National Bank, states as follows:

FIRST DEFENSE.

The Complaint fails to state a claim against Defendant upon which relief can be granted and the Complaint should be dismissed.

SECOND DEFENSE.

Defendant denies the allegation contained in the first sentence of Paragraph (1) of the Complaint which refers to Title 12 Paragraph 35 United States Code; and states that the defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegation contained in the last sentence of Paragraph (1) of the Complaint, and therefore denies same.

THIRD DEFENSE.

Defendant admits the allegations contained in Paragraphs (2), (3) and (5) of the Complaint.

FOURTH DEFENSE.

In answer to Paragraph (4) of the Complaint, the Defendant admits the first sentence, but further states that the principal office of the Fort Knox National Bank is

within the geographical boundaries of Hardin County, Kentucky, on the Fort Knox Military Reservation.

FIFTH DEFENSE.

Defendant denies Paragraph (6) of the Complaint and states that the right of National banks to establish branch banks is governed by Title 12 U. S. Code Section 36, which section incorporates by reference the State law applicable to State banks only to the extent spelled out in 12 USC 36(c).

SIXTH DEFENSE.

Defendant admits that Paragraph (7) of the Complaint is a correct quotation of a portion of KRS 287.180 which section relates to "powers of banks; branch and agency banks." Said Paragraph (7) of the Complaint, however, quotes only paragraphs (1), (2)(a) and (2)(b) of said section of the Kentucky Statute. It omits to quote paragraphs (2)(c), (3), (4), (5) and (6) of said section. Paragraph (5) of KRS 287.180 which contains the only reference to national banks reads as follows:

> "Any national banking association or any state bank member of the Federal Reserve System whose principal office is located in this state is hereby authorized to do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of such powers."

Defendant denies that the right of national banks to establish a branch bank is governed by KRS 287.180 or any other section of the Kentucky Statute. Such power is derived only from the provisions of 12 U. S. Code Section 36.

SEVENTH DEFENSE.

Defendant denies the allegation contained in Paragraph (8) of the Complaint that it is authorized under and by the provisions of the Kentucky Statute to own and operate a

branch bank in Radcliff, Hardin County, Kentucky. Defendant's permission and authority to open and operate a branch in Radcliff, Hardin County, Kentucky, is granted under 12 U. S. Code Section 36 and such opening and operation of a branch is entirely lawful under the laws of the United States which laws apply to Defendant.

EIGHTH DEFENSE.

Defendant denies allegations contained in Paragraph (9) of the Complaint and states affirmatively that it has its principal office within the geographic boundaries of Hardin County, Kentucky, on the Fort Knox Military Reservation. Defendant states that the laws of the United States applying to national banking associations do not require the appointment of a process agent.

NINTH DEFENSE.

Defendant states it does not have sufficient knowledge or information to form a belief as to the truth of the allegation contained in Paragraph (10) of the Complaint and therefore denies same.

TENTH DEFENSE.

The Defendant states that James J. Saxon, Comptroller of the Currency, Treasury Department of the United States, who approved the Defendant's application to establish a branch office in Radcliff, Hardin County, Kentucky, by letter dated April 16, 1965, a copy of which is attached hereto as Defendant's Exhibit "A," is a proper party and in order to effectively dispose of all the issues raised herein and to enable the Court to grant complete relief, said James J. Saxon, Comptroller of the Currency, should be made a party hereto.

Wherefore, having fully answered the Complaint, Defendant, Fort Knox National Bank, demands as follows:

(1) That this action be dismissed because the Complaint fails to state a claim against the Defendant upon which relief can be granted.

(2) That James J. Saxon, Comptroller of the Currency, Treasury Department of the United States, be made a party hereto under Rule 13(h) because his presence is required for the granting of complete relief in this action.

(3) That the Court award to the Defendant its costs and attorneys fees.

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Louisville, Kentucky 40202,
Telephone: 584-8027,
Attorney for Defendant, Fort Knox National Bank.,

(s) Robert E. Hatton,
310 W. Liberty Street, Suite 106
Louisville, Kentucky 40202,
Telephone: 587-6933,
Attorney for Defendant, Fort Knox National Bank.

I hereby certify that a copy of this Answer has been this date, June, ____, 1965, mailed to L. A. Faurest, Jr., 128 W. Dixie Highway, Elizabethtown, Kentucky, Attorney for First Hardin National Bank, Radcliff, Kentucky, and to H. L. James, 31 Public Square, Elizabethtown, Kentucky, Attorney for Farmers Bank of Vine Grove, Kentucky.

L. Lyne Smith, Jr.,
Attorney for Defendant.

(s) Robert E. Hatton,
Attorney for Defendant.

APPENDIX G

ANSWER OF INTERVENER-DEFENDANT.

Intervener-Defendant, James J. Saxon, Comptroller of the Currency of the United States, by his undersigned attorneys, in answer to the plaintiffs' complaint filed herein, admits, denies and alleges as follows:

1. Intervener-Defendant (hereinafter called "the Comptroller") denies the allegations contained in paragraph 1 of the complaint.

2. The Comptroller admits the allegations contained in paragraph 2 of the complaint.

3. For lack of knowledge or information sufficient to form a belief, the Comptroller denies the allegations contained in paragraph 3 of the complaint.

4. The Comptroller admits the allegations contained in paragraph 4 of the complaint.

5. The Comptroller admits the allegations contained in paragraph 5 of the complaint.

6. The Comptroller admits that 12 U.S.C. 36 sets forth conditions on which national banks may establish branches and refers the Court to that section for the language thereof.

7. The Comptroller admits that the quotation from Kentucky Revised Statutes 287.180 is accurate and refers the Court to that section for the complete language thereof.

8. The Comptroller admits the allegations contained in paragraph 8 of the complaint.

9. The Comptroller denies the allegations contained in paragraph 9 of the complaint except that he denies that the defendant's operations are governed by any state statutes.

10. The Comptroller denies the allegations contained in paragraph 10 of the complaint.

Defendant denies each and every allegation of the complaint not herein admitted, qualified or denied.

FIRST AFFIRMATIVE DEFENSE.

The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE.

The Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE.

Plaintiffs lack standing to maintain this action.

Wherefore, having fully answered the Comptroller of the Currency of the United States, intervener-defendant, prays:

1. That the relief requested by the plaintiffs be denied and the complaint be dismissed;

2. That the Court adjudge, decree and declare that the approval by the Comptroller of the Currency of the application of the Fort Knox National Bank to establish a branch at Central Parkway and Woodland Drive in the City of Radcliff, Hardin County, Kentucky, is in accordance with law; and

3. That the intervener-defendant be given all such other and further relief as the Court may deem just and proper.

Respectfully submitted,

John W. Douglas,
Assistant Attorney General,

Ernest W. Rivers,
United States Attorney

Harlan F. Leathers,
Richard S. Beatty,
Attorneys, Department of Justice.
Attorneys for Defendant Saxon.

CERTIFICATION.

I hereby certify that on this day, September 21, 1966, I have served the foregoing Petition for Writ of Certiorari upon the parties by mailing a copy of same to:

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Robert E. Hatton, Esquire
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SUPREME COURT OF THE UNITED STATES

October Term 1966

No. 588

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - Petitioners,

versus

FORT KNOX NATIONAL BANK and JAMES J. SAXON, Comptroller of the Currency of the United States, - - - - - Respondents.

FORT KNOX NATIONAL BANK'S RESPONSE TO PETITION.

"(6) A state bank, whose principal office is situated on that part of the Fort Knox Military Reservation which is a part of Hardin County, could, with the approval of the Kentucky Commissioner of Banking, establish a branch in the incorporated city of Radcliff, Hardin County, Kentucky." (U. S. District Court's Conclusion No. 6.)

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Counsel for Respondents, Fort Knox National Bank.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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SUPREME COURT OF THE UNITED STATES

October Term 1966

No. _____

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - - - *Petitioners,*

v.

FORT KNOX NATIONAL BANK and JAMES J. SAXON, Comptroller of the Currency of the United States, - *Respondents.*

FORT KNOX NATIONAL BANK'S RESPONSE TO PETITION.

QUESTIONS PRESENTED.

The respondent is dissatisfied with the petitioners' statement of the Questions Presented and therefore makes this counter-statement of the Questions Presented.

(1) Have the Petitioners stated a case upon which this Court under its rules may grant certiorari?

(2) Does land located in Hardin County at the time of acquisition by the United States and cession of jurisdiction by Kentucky remain a part of Hardin County after such acquisition and cession?

(3) Have the Courts below and the Comptroller correctly construed and applied the law applicable to establishment of bank branches in Kentucky?

(4) Does the Court have jurisdiction to set aside the decision of the Comptroller of the Currency unless it was arbitrary, capricious, and an abuse of discretion, or otherwise not in accordance with law?

ARGUMENT

I

THE PETITIONERS HAVE NOT STATED A CASE UPON WHICH CERTIORARI MAY BE GRANTED.

The considerations governing review on certiorari are stated in Rule 19 of this Court. Rule 23(1)(b) requires the petitioner to state concisely the grounds on which the jurisdiction of this Court is invoked.

On pages 7 and 8 petitioners state four so called "Reasons for granting the Writ." These may be summarized as three:

(1) the decision below *"appears to be"* in conflict with a decision of the Court of Appeals for the District of Columbia;

(2) the Courts below and the Comptroller have misconstrued the law of Kentucky; and

(3) have by their interpretation violated the intent of the National Banking Act by destroying the basic quality of the dual banking system.

The following discussion of their three so called reasons will, it is hoped, clearly indicate that this Court should deny the writ.

(1) There Is no Conflict Between the Sixth Circuit Court of Appeals Decision and the Decision of Any Other Circuit Court of Appeals.

The only case cited by petitioners to show a conflict is *Commercial State Bank* v. *Gidney,* 174 F. Supp. 770 (D. C. D. C. 1959), *aff'd per curiam,* 278 F. 2d 871 (D. C. Cir., 1960).

Even a casual reading of the two decisions clearly reveals there is no conflict. In the case at bar the District Court *did* review the Comptroller's conclusions of law (Conclusions 1-6, Petition Appendix 28, 29) and the District Court's conclusions were reviewed and affirmed by the Sixth Circuit.

In *First Hardin National Bank,* Kentucky law (KRS 287.180(1)(2)(b)) *permits* a state bank to establish a branch in any incorporated city in the same county if there is no principal bank, *as distinguished from a branch,* in that city. Radcliff is an incorporated city in Hardin County.

In *Commercial State Bank,* Michigan law (Michigan Financial Institutions Act, Sec. 437.34) *prohibits* the establishment of a branch in another city or village in the same county where the bank has its principal office *if there is either a bank or a branch* in that city or village (174 F. Supp. 770, 774). Michigan permits the establishment of branches *only* in cities or villages.

The District Court for the District of Columbia properly held that: (1) if the township of Clinton (unincorporated) is not a village then a branch could not be established; and (2) if Clinton is a village there

was already a bank branch there and hence another bank's branch may not be established (174 F. Supp. 770, 776). Accordingly the Court issued an injunction against the Comptroller.

(2) Neither Courts Below Nor the Comptroller Decided the Question in Conflict With Kentucky Law.

It is undisputed that Kentucky Law permits a state bank to establish a branch in another incorporated city in the same county if there is no principal bank *as distinguished from a branch* in that city (KRS 287.180-(2)(b)).

Not only this Court but the Court of Appeals of Kentucky have held that federal ownership of the land coupled with state cession of exclusive jurisdiction to the United States does not remove the area from the geographical boundaries of the county. *Howard* v. *Commissioners of Sinking Fund,* 344 U. S. 624, *aff'g* Ky., 249 S. W. 2d 816, 248 S. W. 2d 340.

It is clear that the Courts below and the Comptroller assiduously followed both Kentucky's statutory law and case law.

(3) The Courts Below and the Comptroller Clearly Interpreted the National Banking Act so as to Preserve the Basic Equality of State and National Banks in the Matter of Branching.

The National Banking Act (12 U. S. C. 36(c)) adopts the state's standards, in so far as *location* is concerned, as the Federal standards for the establishment of branches of national banks.

As we have shown above, had the Fort Knox Bank been a state bank, it could, with the permission of the Kentucky Commissioner of Banking, have established a branch in Radcliff, Hardin County, Kentucky (District Court's Conclusion 6, Petition Appendix 28).

II.

LAND LOCATED IN HARDIN COUNTY AT THE TIME OF ACQUISITION BY THE UNITED STATES AND CESSION OF JURISDICTION BY KENTUCKY REMAINS A PART OF HARDIN COUNTY AFTER ACQUISITION AND CESSION.

Petitioners readily admit that the principal office of the Fort Knox National Bank is located geographically in Hardin County (Petition, pp. 12, 13). But they then fall into the same error in interpreting *Commissioners of Sinking Fund of Louisville* v. *Howard,* 344 U. S. 624 (1953), as they did below. The first issue determined by this Court in *Howard* was:

> "(1) The validity of the annexation by the City of Louisville, of certain federally owned land on which a Naval Ordnance Plant is located;" (344 U. S. 624, 625).

If the Naval Ordnance Plant were not in Jefferson County contiguous to the City of Louisville, the City would have no *jurisdiction* to annex it. No Federal Statute intervened to authorize the *annexation.* The "Buck Act" (4 U. S. C. 105) intervened only to permit certain *taxation* in federal areas. *Annexation* was a condition precedent to *taxation* and was authorized not

by Federal statute but because, as stated by this Court (344 U. S. 626):

> "The appellants first contend that the City could not annex this federal area because it had ceased to be a part of Kentucky when the United States assumed exclusive jurisdiction over it. With this we do not agree. When the United States, with the consent of Kentucky, acquired the property upon which the Ordnance Plant is located, the property did not cease to be a part of Kentucky. The geographical structure of Kentucky remained the same. In rearranging the structural divisions of the Commonwealth, in accordance with state law, the area became a part of the City of Louisville, just as it remained a part of the County of Jefferson and the Commonwealth of Kentucky."

Kentucky's jurisdiction over Fort Knox lies "dormant" so long as Congress retains exclusive jurisdiction as the Kentucky Court of Appeals said in deciding *Howard*, Ky., 248 S. W. 2d 340, 342 (1952):

> "A Federal area within the geographic boundaries of a state lies dormant, so far as concerns the authority of the state to exercise jurisdiction within the area, as long as Congress retains exclusive jurisdiction, but when Congress recedes part of its jurisdiction the area comes to life as a part of the state to the extent of the recession."

This concept of "dormant" jurisdiction was adopted by Sixth Circuit Court of Appeals in its opinion wherein it stated:

"Under the terms of the conveyance, the loss of jurisdiction was not absolute. The interest of Kentucky in the land conveyed became *dormant*, and will remain dormant so long as the land conveyed remains the property of the United States. When the United States ceases to own the land conveyed, jurisdiction will be *reactivated* in the State of Kentucky. The geographical structure of the State of Kentucky not only remains the same, but the state *retains a dormant jurisdiction* over the land . . ." (Emphasis supplied.) (361 F. 2d 276, 279).

Indeed, as pointed out in a footnote to the opinion of Circuit Judge Celebrezze (361 F. 2d 279), under sections 63 and 65 of the Constitution of Kentucky, no land may be stricken from Hardin County except by petition and vote of the majority of the people of Hardin County. This was never done.

III.

THE COURTS BELOW AND THE COMPTROLLER HAVE CORRECTLY CONSTRUED AND APPLIED THE LAW APPLICABLE TO THE ESTABLISHMENT OF BANK BRANCHES IN KENTUCKY.

When the Kentucky General Assembly first enacted the branch banking law in 1954 permitting limited county wide branch banking (KRS 287.180(2)), it must be presumed to have been aware of the decision of its highest Court (*Howard*, Ky., 248 S. W. 2d 340), that a *county is still a county* although the United States may own the land and have exclusive jurisdic-

tion over it. Therefore, it used the word "county" in KRS 287.180(2)(b)) in that context.

That section stripped of its nonessentials provides:

> "(2) Any Corporation . . . engaged in the business of banking . . . may apply to the Commissioner of Banking for permission to establish . . . within the county in which its principal office is located . . . in which there is no existing bank . . ."

It is admitted that Radcliff, Kentucky is an incorporated city in Hardin County in which there is no bank but only a branch of the First Hardin National Bank.

The pertinent provisions of KRS 287.180(2)(b) are:

> "(b) No such corporation shall be permitted to establish a branch in any incorporated city, other than the city in which its principal office is located . . . in which there is an existing bank . . . As used in this subsection, an 'existing bank' shall mean the principal office of a bank as distinguished from a branch thereof."

Thus it is clear that a state bank meeting the financial requirements of the Statute (which the Fort Knox National Bank undisputedly does) may, with the permission of the Commissioner of Banking, establish a branch in another incorporated city in the *same* county if there is no principal office of a bank in such city.

The pertinent provisions of the National Banking Act, 12 U. S. C. Sec. 36(c) are:

"(c) A national banking association may, with the approval of the Comptroller of the Currency establish and operate branches . . . *at any point within the state* in which said association is situated, if such establishment and operation are at the same time authorized to state banks by the statute law of the state in question . . . and subject to the restrictions as to location imposed by the law of the state on State banks." (Emphasis supplied.)

A similar contention to that made by petitioners that the part of the Fort Knox Reservation upon which the Fort Knox National Bank is located is not within Hardin County, was made in *Alabama-Tennessee Nat. Gas Co.* v. *City of Huntsville,* 257 Ala. 184, 191, 153 So. 2d 619, 626 (1963). City of Huntsville under a contract with the Gas Company had the exclusive right to sell gas in Madison County outside of the incorporated cities. Alabama had ceded all jurisdiction to the U. S. over some 44,000 acres comprising the Redstone Arsenal. The Gas Company contended that the Arsenal was no longer in Madison County within the meaning of the exclusive contract. The Alabama Supreme Court, relying on *Howard,* rejected the contention stating:

"The territory comprising Redstone Arsenal was described as being in Madison County when ceded to the Federal Government by the State of Alabama. That cession did not change either state or county boundaries. The territory over which the Federal Government acquired jurisdiction still remained in Madison County."

In *Bd. of Commissioners* v. *Board of School Com'rs*, 130 Ind. App. 506, 166 N. E. 2d 880, 881, 884 (1960), Marion County, Indiana, was held liable to the City of Indianapolis for school tuition of children whose fathers were "officially stationed and assigned to duty at a place within the geographical boundaries of Marion County but over which jurisdiction had been ceded to the United States." In relying on *Howard* the Court stated (166 N. E. 2d 884):

> "The legal concept of jurisdiction and the geographical structures of a state are not one and the same."

IV.

THE COURTS MAY NOT SET ASIDE THE DECISION OF THE COMPTROLLER UNLESS IT WAS ARBITRARY, CAPRICIOUS, AND AN ABUSE OF DISCRETION, OR OTHERWISE NOT IN ACCORDANCE WITH LAW.

The Federal Administrative Procedure Act, 5 U. S. Code, Section 1009(e)(b), clearly states the conditions upon which an action of an administrative agency can be set aside by the Federal courts. The one applicable to this case is as stated in the heading.

Having found that the action of the Comptroller of the Currency was not arbitrary, capricious, and an abuse of discretion, or otherwise not in accordance with law, the lower Court and the Sixth Circuit had no alternative under the Administrative Procedure Act but to sustain the action of the Comptroller.

This exact question was passed upon by this Sixth Circuit Court of Appeals in *Community National Bank of Pontiac* v. *Saxon*, 310 F. 2d 224, wherein the Court stated:

> "It is well settled that the decisions of executive officers on questions of fact are conclusive if reasonably supported by substantial evidence" (310 F. 2d 226).

In a case decided in 1965, the United States Court of Appeals for the Third Circuit held in *N. L. R. B.* v. *Jas. H. Matthews & Co.*, 342 F. 2d 129, 131:

> "Administrative action may be regarded as arbitrary and capricious only where it is not supportable on any rational basis. This Court, and others, have heretofore held that 'something more than error is necessary to spell out arbitrary or capricious action.' . . . The fact that on the same evidence a reviewing court could have reached a decision contrary to that reached by the agency will not support a determination that the administrative action was arbitrary and capricious."

V.

ANSWERS TO PETITIONERS' POINTS OF ARGUMENT (Petition 8-22).

In their argument Petitioners attempt to establish three points as follows:

(1) Fort Knox is not within Hardin County within the meaning of Kentucky Revised Statute 287.180(2) and the Comptroller of the Cur-

rency has no authority 12 U. S. C. 36(c) to permit a national bank located on Fort Knox to establish a branch in Hardin County.

(2) Petitioners have not had their day in Court when the District Court and Court of Appeals have refused to fully review the Comptroller of the Currency's Finding of Law that the establishment of a bank in Hardin County by the Fort Knox National Bank is authorized by law.

(3) The determination of the Comptroller of the Currency and the Courts below is in conflict with the purposes and intent of the National Bank Act as found in 12 U. S. C., *et seq.*, as interpreted by the Courts.

We shall endeavor to answer each in order.

(1) Fort Knox Is Not Within Hardin County Within the Meaning of KRS 287.180(2).

This point has already been covered (*supra*, pp. 5, 6 and 7). However, we shall discuss the cases cited by Petitioners to which we have not already adverted.

On page 9 of the petition *State of South Dakota* v. *National Bank of South Dakota,* 219 F. Supp. 842 (D. C. S. D., 1963), *aff'd* 335 F. 2d 444 (Cir. 8, 1964), *cert. denied,* 379 U. S. 970 (1964), was cited as support for the proposition that doubts concerning State law authorization of branches be resolved against permitting the branch. This is, indeed, a strange interpretation of that case. It involved *merger* of a state bank with a national bank, *not branching.* The Court

held that the State had no standing to maintain the action to prevent the merger, gave summary judgment for the defendant national bank, and dismissed the complaint.

On pages 10-13 three Kentucky cases are cited: *Hardin County Board of Supervisors* v. *Kentucky Limousines, Inc.*, Ky., 293 S. W. 2d 239 (1956); *Commonwealth* v. *King*, 252 Ky. 699, 68 S. W. 2d 45 (1934); and *Kingwood Oil Co.* v. *Henderson County Bd. of Sup.*, Ky., 367 S. W. 2d 129 (1963).

Kentucky Limousines is cited for the proposition that tangible property on the military reservation of Fort Knox is not subject to Kentucky ad valorem taxation. This we readily admit, but in that case the Kentucky Court recognized that Fort Knox was geographically in Hardin County (Petition, p. 12).

King involved the criminal jurisdiction of Kentucky of an offense committed on the reservation against a state bank branch (now no longer there). The Court properly held that Kentucky, having ceded exclusive jurisdiction, the State Courts had no jurisdiction.

Kingwood involved an attempt by Henderson County, Kentucky, to tax ad valorem Kingwood's oil and gas lease with the U. S. Department of Interior covering 700 acres of Camp Breckinridge, Kentucky. The Court held that, Kentucky, having ceded jurisdiction (KRS 3.110) and the Congress not having retroceded, Henderson County could not tax.

(2) Petitioners Have Not Had Their Day in Court.

For petitioners to claim "they have not had their day in Court" is patently absurd.

In *Mississippi Valley Barge L. Co.* v. *United States*, 292 U. S. 282, 287 (1934), this Court stated:

> "The *judicial function is exhausted* when there is found to be a rational basis for the conclusions approved by the administrative body." (Emphasis supplied.)

In *Mitchell Bros. Trucklines* v. *United States*, 225 F. Supp. 755, 758 (D. C. Ore., 1963), *aff'd* 378 U. S. 125, the above exact quotation was announced by the District Court and applied in that case.

In *Hoffman* v. *Ribicoff*, 305 F. 2d 1 (Cir. 8, 1962), where the Court reviewed a decision of the Secretary of Health, Education and Welfare under the Social Security Act, the Court said:

> "Where an administrative agency is charged with applying *general statutory language* to a concrete factual situation, the Courts will not disturb the conclusion reached by the agency if there is a rational basis in the record therefor." (Emphasis supplied.)

Both the District Court and the Sixth Circuit have carefully reviewed and approved the conclusions reached by the Comptroller. Petitioners have had their day in Court, and the judicial function has been exhausted.

In support of the contention that they have not had their day in Court petitioners cite other cases, none of which supports their contention (Petition 15-20).

Commercial State Bank v. *Gidney*, 174 F. Supp. 770 (D. C. D. C.), has been fully discussed (*supra*, p. 3). It does not support petitioners.

Patton v. *Railroad Retirement Board*, 313 F. 2d 434 (Cir. 5, 1963), involved a determination of which two persons claiming to be Patton's wife was the real one. The Court upheld the Board's finding that "Emma" and not "Stella" was the true widow. The Court pointed out that they should review the Board's legal conclusions. No one questions that. In the case at bar both the District Court and the Sixth Circuit reviewed the Comptroller's legal conclusions and agreed with them.

Boyd v. *Folson*, 257 F. 2d 778 (Cir. 3, 1958), is another widow's benefit case. The Social Security Administration had disallowed the benefits because, although decedent was contributing to his wife's support, he was not actually living with her. The Court reversed the conclusions of law and granted benefits.

Whitney National Bank v. *Bank of New Orleans and Trust Co.*, 323 F. 2d 290 (D. C. Cir., 1963), does involve branch banking. Louisiana law prohibits a state bank from establishing a branch in another parish. Whitney sought to expand its operations into an adjoining parish through the device of a bank holding company. The Court properly held that this was merely a device to circumvent Louisiana law and violated 12 U. S. S., Sec. 36.

Commercial Security Bank v. *Saxon,* 236 F. Supp. 457 (D. C. D. C., 1964), involved an interpretation by Utah's law which prohibited the establishment of a branch in cities other than the first class if there were already existing banks or branches "unless the bank seeking to establish such a branch shall take over an existing bank." The Comptroller granted approval for a national bank to establish a bank in Ogden, a second class city, where there already were four banks and two branches. The Court, holding that this violated Utah law, overruled the Comptroller. We haye no quarrel with that decision. If the Comptroller's interpretation of law differs from the Court's, the Court's must prevail.

But in the case at bar, both the District Court and the Circuit Court of Appeals reviewed the legal conclusions and agreed with them.

Conclusion (6) of the District Court (Petition 28) is as follows:

> "(6) A *state bank,* whose principal office is situated on that part of the Fort Knox Military Reservation which is a part of Hardin County, could, with the approval of the Kentucky Commissioner of Banking, establish a bank in the incorporated city of Radcliff, Hardin County, Kentucky." (Emphasis supplied.)

If a state bank can establish a branch in Radcliff under these circumstances, then the Fort Knox National Bank may do so.

On page 21 of the petition reference is made to an existing branch of the Fort Knox National Bank on

the Fort Knox Military Reservation in that part of that reservation which is in Meade County. This so called branch was established by the Fort Knox National Bank with the approval of the Comptroller of the Currency. This issue is not before this Court nor was it before the lower Courts. Appendix E of the petition contains the complaint which initiated this action. The complaint consists of 12 paragraphs. None of the paragraphs contains any reference to a branch in Meade County. Therefore, this issue is not before the Court and this Court should disregard any reference in the petition to a branch in Meade County. It is elementary that Courts may consider only issues raised by the pleadings. If petitioners or anyone desire to question the legality of the so called branch on the military reservation in Meade County, then that must necessarily be the subject of separate litigation. It was not considered by the District Court nor the Circuit Court of Appeals for the reason that it was not in issue.

CONCLUSION.

The Comptroller of the Currency's determination of Kentucky law was clearly reviewed by the District Court and the Circuit Court of Appeals. The Conclusion of Law of the District Court and the opinion of the Circuit Court of Appeals affirm the conclusions of the Comptroller of the Currency. As we have pointed out, a state bank with its principal office on the Fort Knox Military Reservation in Hardin County could establish, with the approval of the Comptroller, a

branch in Radcliff, Hardin County. Therefore, the Fort Knox National Bank is entitled to the same privilege under 12 U. S. Code, Section 36(c).

For the foregoing reasons the petition for writ of certiorari should be denied.

Respectively submitted,

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I hereby certify that on this day, October 10, 1966, I have served the foregoing Fort Knox National Bank's Response to Petition upon the parties by mailing a copy of same to:

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 588

THE FIRST HARDIN NATIONAL BANK AND THE FARMERS BANK OF VINE GROVE, KENTUCKY, PETITIONERS

v.

FORT KNOX NATIONAL BANK AND JAMES J. SAXON, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE COMPTROLLER OF THE CURRENCY IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 29–34) is reported at 361 F. 2d 276. The opinion of the district court (Pet. App. 25–28) is not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on May 26, 1966. On August 5, 1966, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to and including September 23, 1966.

235-308—66

The petition was filed on September 22, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

The pertinent statutory provisions are set forth in the Appendix, *infra*, pp. 9–12.

QUESTION PRESENTED

Whether the Comptroller and the courts below correctly ruled that that portion of Fort Knox which was a part of Hardin County, Kentucky, at the time of its cession to the United States, continues to be a part of the county for purposes of Kentucky branch banking law, made applicable to national banks by 12 U.S.C. 36(c)(2).

STATEMENT

Fort Knox National Bank has its principal office in that part of the Fort Knox Military Reservation which was within the geographical boundaries of Hardin County at the time of acquisition by the United States (Pet. App. 30–31). After Fort Knox National Bank announced that it would open a branch outside the Military Reservation, in the city of Radcliff in Hardin County, the petitioners brought this action, alleging that the establishment of such a branch would be unlawful and that each would lose customers if the new branch were opened (Pet. App. 41, 43). In its answer, Fort Knox National Bank asserted that under Kentucky law it would be permitted to establish and operate the branch bank, and that the Comptroller of the Currency had given preliminary approval to the establishment of its

branch office by letter dated April 16, 1965 (Pet. App. 45, 46). The Comptroller of the Currency intervened as a party defendant (Pet. App. 26, 30). The background of the litigation is as follows.

On January 22, 1965, Fort Knox National Bank had submitted an application to the Comptroller of the Currency requesting permission to establish a branch in Radcliff, Kentucky. Following receipt of the application, the Comptroller's office conducted an investigation of the proposal, during which time the petitioners herein were accorded and availed themselves of an opportunity to present their views in opposition to the proposed branch.

On completion of the investigation, the Comptroller, on April 15, 1965, gave his preliminary approval to the application, provided that the bank increase its capital to a minimum of $250,000, and that the branch be opened within twelve months. As of the time of the hearing below, Fort Knox National Bank had not asked for a Certificate of Authority to open the branch nor had one been granted (Pet. App. 30). The evidence in the district court included a map prepared by the Army Corps of Engineers in 1960 (approximately five years before the present controversy), which showed that the principal office of the Fort Knox National Bank was located in that part of Fort Knox which was in Hardin County at the time the United States acquired the land.

On a motion for judgment on the pleadings, the district court held that the Comptroller of the Currency, in approving Fort Knox National Bank's application to open a branch in Radcliff, Hardin

County, had correctly applied Kentucky law, which permits a state bank to establish and operate a branch bank in any incorporated city in the same county in which its principal office is located, provided that no other bank's principal office is located in that city[1] (Pet. App. 27–28). The court found that the defendant Fort Knox National Bank had its principal office on the Fort Knox Military Reservation "on that part of the reservation which, at the time of acquisition by the United States Government, was geographically a part of Hardin County, Kentucky" (Pet. App. 26). The court concluded that (Pet. App. 27):

> The cession in 1904 (KRS 3.030) by the commonwealth of Kentucky of rights and jurisdiction to the United States over the area now known as the Fort Knox Military Reservation did not cause that portion of the Reservation upon which the principal office of the Fort Knox National Bank is located to cease to be a part of Hardin County and the State of Kentucky. The geographic structure of Hardin County and of Kentucky remained the same as it was before the cession of jurisdiction over the area.

The court of appeals affirmed (Pet. App. 29–34), holding that the Comptroller acted reasonably and in accordance with law in approving the establishment of the branch, because under Kentucky law a state bank could establish and operate a branch bank in its home county. In reaching this conclusion, the court of appeals followed the established principle

[1] It was conceded that no bank has its principal office in the city of Radcliff (Pet. App. 31).

that a military reservation within the state remains a geographical part of the municipality or county of which it was a part at the time of its cession to the United States (Pet. App. 33–34).

ARGUMENT

1. The National Bank Act makes applicable to national banks the geographical "restrictions as to location" imposed upon branch banking by State law.[2] Hence, the principal issue presented by the petition is whether the Comptroller and the courts below correctly ruled that the portion of Fort Knox which was a part of Hardin County at the time jurisdiction over it was ceded to the United States continues to be a part of that county for purposes of the branch banking law of Kentucky (Pet. 8–13, Pet. App. 31–32). Concededly, there are no authoritative decisions of the Kentucky courts on this issue (Pet. 12). But this Court does not sit to resolve controversies over the proper interpretation of State law, particularly when (as here) there is no authoritative State court decision on point, and the function of the interpretation is "nothing but a prediction." *The Tungus* v. *Skovgaard,* 358 U.S. 588, 595.

We submit, in any event, that the Comptroller and both courts below were clearly correct in their interpretation of the banking law of Kentucky. For it is settled both in this Court and under the law of

[2] 12 U.S.C. 36(c)(2); *First National Bank of Smithfield* v. *Saxon,* 352 F. 2d 267, 271 (C.A. 4). See *United States* v. *Philadelphia National Bank,* 374 U.S. 321, 328; *Whitney National Bank* v. *Bank of New Orleans,* 379 U.S. 411, 413 n.1.

Kentucky that the cession of jurisdiction over territory by a State to the United States does not remove the land from the political subdivision or municipality of which it had been a part. *Howard* v. *Commissioners*, 344 U.S. 624, affirming 249 S.W. 2d 816 (Ky. Ct. App.).[3] Indeed, petitioners now concede that "geographically," the portion of Hardin County within Fort Knox remained a part of that county (Pet. 10). Thus, it seems clear that the Fort Knox National Bank should be considered to be in Hardin County for purposes of the geographical or area limitations imposed by the law of Kentucky.

2. Petitioner contends that the court of appeals gave undue deference to the Comptroller's interpretation of Kentucky law (Pet. 14–20), asserting that there exists on the issue of the scope of review of his determination a conflict of decision between the Sixth Circuit, citing the decision below and *Community National Bank of Pontiac* v. *Saxon*, 310 F. 2d 224, and the District of Columbia Circuit, citing *Whitney National Bank* v. *Bank of New Orleans & Trust Co.*, 323 F. 2d 290, reversed on other grounds, 379 U.S. 411, and *Commercial Security Bank* v. *Saxon*, 236 F. Supp. 457 (D.D.C.) pending on certiorari as Nos. 51, 73, and 88.[4] We submit that,

---

[3] Accord, *e.g.*, *Dupont-Fort Lewis School Dist.* v. *Clover Park School Dist.*, 396 P. 2d 979, 982 (Wash., 1964), *Western Union Telegraph Co.* v. *Commonwealth of Virginia*, 204 Va. 421, 425, 132 S.E. 2d 407, 410 (1963). See also cases cited in Brief for Fort Knox National Bank in Opposition, pp. 5–10.

[4] The question presented in *First National Bank of Logan* v. *Walker Bank & Trust Co.* No. 51, this Term, and *First Security*

notwithstanding the language in the decisions, a closer reading of the cases indicates no conflict in their holdings. Even under the language of the District of Columbia Circuit cases, the result below would be the same, for if a Certificate is issued, the branch will be at a location permitted by the law of Kentucky, so that the Comptroller's action could not be characterized as "approv[ing] the establishment of a branch office at a location prohibited by law," *Whitney National Bank, supra,* 323 F. 2d at 300 (C.A.D.C.), quoting *Commercial State Bank of Roseville* v. *Gidney,* 174 F. Supp. 770, 778 (D.D.C.). In other words, petitioner's contention on the scope of review depends for its validity upon petitioner's assertion that "the law of Kentucky is quite clearly contrary to the determination of the Comptroller * * *" (Pet. 19–20), an assertion we consider to be unsupported by apposite Kentucky or other persuasive authority, and one that is contrary to the rulings of both courts below. See 361 F. 2d at 278–279 (Pet. App. 31–34); Pet. App. 27–28.

In any event, this Court has consistently ruled that "'where Congress has committed to the head of a department certain duties requiring the exercise of judgment and discretion, his action thereon, whether it involve questions of law or fact, will not be reviewed by the courts, unless he has exceeded his authority or this court should be of opinion that his action was

---

Bank of Utah v. *Commercial Security Bank*, Nos. 73 and 88, this Term, is whether the National Bank Act incorporates by implication State law restrictions on branch banking, other than "restrictions as to location," which are specifically incorporated (12 U.S.C. 36(c)(2)). The issue here is merely the interpretation of concededly applicable Kentucky law.

clearly wrong.' *Bates & Guild Co.* v. *Payne,* 194 U.S. 106, 108–109." *United States* v. *Shimer,* 367 U.S. 374, 381–382. See also *O'Keeffe* v. *Smith Associates,* 380 U.S. 359, 362–364.[5]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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---

[5] Petitioners also contend that the authorization to establish a branch in Radcliff confers an unfair advantage upon Fort Knox National Bank because it already operates a branch on that part of the military reservation that is within Meade County, and a state bank would be unable to operate branches in two counties (Pet. 21–22). We have been informed that the bank's office in Meade County operates as a facility pursuant to 12 U.S.C. 90, a facility to which branch banking laws do not apply. *State of Texas* v. *National Bank of Commerce of San Antonio,* 290 F. 2d 229, 233 (C.A. 5), certiorari denied *sub nom. Falkner, Banking Commissioner* v. *National Bank of Commerce of San Antonio,* 368 U.S. 832. At any rate, if there were any impropriety in the operation of a branch in Meade, this proceeding is not appropriate to challenge it.

APPENDIX

STATUTES INVOLVED

The National Bank Act, Revised Statutes § 5155, as amended by Section 23 of the Banking Act of 1933, 12 U.S.C. 36, provides in pertinent part:

> § 36. Branch banks.
>
> The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:
>
> * * * * *
>
> (c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish

and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided,* That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock. [As amended July 15, 1952, c.753, § 2(b), 66 Stat. 633; Sept. 28, 1962, Pub. L. 87–721, 76 Stat. 667.]

Kentucky Revised Statutes 3.030 provides:

> Kentucky cedes to the United States all the rights and jurisdiction which she now possesses over the land and premises in the vicinity of West Point, Kentucky, conveyed or to be conveyed to the United States for the purpose of establishing a permanent camp of instruction and military post, so long as the same shall remain the property of the United States.

The Kentucky statutes regulating branch banking, Kentucky Revised Statutes 287.180, provide in pertinent part:

> (1) Banks authorized under the laws of this state may, except as provided in subsection (2)

of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest thereon, buying and selling exchange, coin and bullion and lending money on personal or real security.

(2) Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Banking for permission to establish, within the city in which its principal office is located and, subject to the limitation hereinafter imposed, within the county in which its principal office is located or in an adjacent county, in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised. Before the Commissioner of Banking shall approve or disapprove any application made under this subsection he shall ascertain and determine that the public convenience and advantage will be served and prompted thereby and that there is reasonable probability of the successful operation of such branch. No such branch shall be authorized or approved by the commissioner unless all of the following are complied with:

(a) No such corporation having a combined capital and surplus of less than $100,000 shall be permitted to establish any branch. Any corporation applying for permission to establish a branch shall, be required to have a minimum combined capital and surplus for each branch in any unincorporated area within a following table:

* * * * *

(b) No such corporation shall be permitted to establish a branch in any incorporated city, other than in the city in which its principal

office is located or in any adjacent county, in which there is an existing bank. Nor shall any such corporation be permitted to establish a branch in any unincorporated area within a radius of one mile of an existing bank located in such unincorporated area. As used in this subsection, an "existing bank" shall mean the principal office of a bank as distinguished from a branch thereof.

* * * * *

(5) Any national banking association or any state bank member of the Federal Reserve System whose principal office is located in this state is hereby authorized to do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of such powers.

* * * * *

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Supreme Court Of The United States

October Term 1966
No. 588

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - - - Petitioners,

versus

FORT KNOX NATIONAL BANK and JAMES J. SAXON, Comptroller of the Currency of the United States, - - Respondents.

SUPPLEMENTAL BRIEF

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SUPREME COURT OF THE UNITED STATES

October Term 1966

No. 588

THE FIRST HARDIN NATIONAL BANK and
THE FARMERS BANK OF VINE GROVE,
KENTUCKY, - - - - - - *Petitioners,*

vs.

FORT KNOX NATIONAL BANK and
JAMES J. SAXON, Comptroller of the
Currency of the United States, - *Respondents.*

SUPPLEMENTAL BRIEF

In accordance with the authority granted by Rule 24(4) of the Rules of this Court, Petitioners submit this Supplemental Brief.

Respondents have raised four points in their Responses to Petitioners' Application for a Writ of Certiorari which Petitioners judge need clarification or correction.

I

Respondent Fort Knox National Bank argues that there is no conflict between the decision of the Sixth

Circuit Court of Appeals in the case below and the decision of the Court of Appeals for the District of Columbia in *Commercial State Bank* v. *Gidney,* 174 F. Supp. 770 (D.C. D.C. 1959), aff'd per curiam, 278 F. 2d 871 (D.C. Cir., 1960). Any reading of these decisions reveals this position to be untenable. In *Commercial State Bank* v. *Gidney, supra,* the Court extensively reviewed state law and cases to see if the Comptroller of the Currency made a correct determination of state law. In the case below the Sixth Circuit Court of Appeals made no such search and relied upon the case of *Howard* v. *Commissioners of the Sinking Fund,* 344 U.S. 624 (1953). The conflict between these two decisions results from opposing views of the basic nature of the Comptroller's findings as to state law. The District of Columbia Circuit views such findings as findings of law and as such subject complete judicial review. The Sixth Circuit Court of Appeals held below that the finding "is a factual finding", and subject only to inquiry as to its arbitrariness, capriciousness, or contrariety to law. It is Petitioners' position that the District of Columbia Circuit is correct and the failure of the Sixth Circuit Court of Appeals to fully review the Comptroller's determination on the point has denied Petitioners their day in Court.

II

On page 10 of the Response to the Petition, Respondent Fort Knox National Bank quotes from the

case of *Board of Commissioners* v. *Board of School Commissioners,* 130 Ind. App. 506, 166 N.E. 2d 880 (1960) as follows:

> "The legal concept of jurisdiction and the geographical structures of a state are not one and the same."

The point made in the above cited case is exactly the point Petitioners have been making throughout this litigation. Article 1, Section 8 of the Constitution of the United States provides for exclusive Federal *jurisdiction* over military reservations. In light of this section of the Constitution, the states have no power to exert jurisdiction over military reservations unless such jurisdiction is specifically granted to the states by Federal statute. In the absence of such a statute, any attempt to exert jurisdiction over Federal property is patently unconstitutional. To construe the word "county" as found in Chapter 287 of the Kentucky Revised Statutes to include Fort Knox is to extend the state's jurisdiction to a Federal reservation which is, of course, an unconstitutional construction. As has been shown in Petitioners' Brief (pages 10 through 13), absent such a saving statute, the Kentucky Court of Appeals has uniformly held the word "county" when used in a regulatory or taxing statute as not including Federal territory.

III

Respondent Fort Knox National Bank apparently believes that the Petitioners are calling into question

the validity of its Meade County Branch Bank located on the Fort Knox military reservation. Respondent has missed the point. Under Petitioners' theory of the case, the Fort Knox Meade County Branch is valid because the word "county" in the Kentucky Banking Act does not apply to military reservations, and, therefore, the Comptroller's allowance of the establishment of the branch has not violated the provisions of 12 USC Section 36(c). What Petitioners do object to is the end result if Respondent is allowed to establish a branch bank in Hardin County outside the Fort Knox military reservation. To allow the establishment of such a branch, it must be found that the principal office of the bank on Fort Knox is within Hardin County within the meaning of Chapter 287 of the Kentucky Revised Statutes. If so, then by the same logic, the branch on the post within the confines of what was formerly Meade County is within Meade County, and this results in the National Bank extending its areas of business into places denied to a state bank. As is stated in Petitioners' Petition for a Writ of Certiorari, Petitioners believe this would result in a substantial violation of the spirit and intent of the National Banking Act. It would inequitably give Respondent the best of both worlds.

Respondent, the Comptroller of the Currency, rebuts the above stated argument by claiming that the Meade County branch bank would not be violative of 12 USC, Section 36(c) because it is authorized under 12 USC, Section 90 and that these two sections are mutually exclusive of each other. He cites *State of*

Texas v. *National Bank of Commerce of San Antonio,* 290 F. 2d 229 (5th Cir., 1961), cert. denied *sub nom. Falkner, Banking Commissioner* v. *National Bank of Commerce of San Antonio,* 368 U.S. 832 (1961), in support of this contention (see Footnote 5, page 8, Respondent's Brief). Accepting for the purposes of argument that this is the law, the Respondent becomes trapped in the basic jurisdiction argument raised on page 8 of Petitioners' Petition for a Writ of Certiorari.

If Respondent's interpretation of 12 USC, Section 90 is correct, then it is because the Federal Government has exclusive jurisdiction over federal property and its administration, which includes the power to allow certain convenience facilities to exist on the post with which the states may not interfere. By making this argument the Respondent admits that there are two separate jurisdictions involved in this case, i.e., the Fort Knox Military Reservation and Hardin County. It is this fact that distinguishes *Howard* v. *Commissioners,* 344 U.S. 624 (1953), from the instant case, for in the *Howard* case there was *concurrent* jurisdiction over the federal property. When presented with these facts, the Kentucky Court of Appeals has repeatedly defined the word "county" as found in the Kentucky Statutes as exclusive of federal property.

IV

On page 12 of Respondent Fort Knox National Bank's reply it is contended that Petitioners have cited the case of *State of South Dakota* v. *National*

Bank of South Dakota, 219 F.Supp. 842 (D.C. S.D., 1963), aff'd 335 F. 2d 444 (8th Cir., 1964), cert. denied, 379 U.S. 970 (1964), for the proposition that doubts concerning state law authorization of branches should be resolved against permitting the branch. Such is not the case. The case was cited in support of position that the intent of the National Banking Act is to maintain a balance between dual banking systems. The authority for resolving doubts as to authorization of banks under state law against the authorization is the statute itself. 12 USC, Section 36(c) reads in part:

> "A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time *expressly authorized* to State banks by the law of the State in question; . . ." (Emphasis added.)

Since no express authority exists in Kentucky for the establishment of branches in cases such as presented by the facts of the case now before this Court, any doubts as to the validity of the Comptroller's action should be resolved against his action.

Respectfully submitted,

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CERTIFICATION

I hereby certify that on this day, Friday, October 28, 1966, I have served the foregoing Supplemental Brief upon the parties by mailing a copy of same to:

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